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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte**
CC Docket No. 96-98 /

Dear Ms. Salas:

Cbeyond Communications ("Cbeyond") supports the recent proposal of Allegiance Telecom, Inc. ("Allegiance") in this proceeding defining when incumbent local exchange carriers ("ILECs") must provide local switching as an unbundled network element ("UNE").¹ Allegiance proposes that the Commission find that competitive local exchange carriers ("CLECs") without access to unbundled local switching are not impaired in their ability to serve any business customers in any metropolitan statistical areas ("MSAs") in which four or more CLECs have deployed switches, provided that the ILEC provides nondiscriminatory access to the enhanced extended link ("EEL").

A Residential/Business Split Provides a Better Identification of the Mass Market

In the *UNE Remand Order*, the Commission determined that CLECs are impaired in their ability to serve the mass market without access to unbundled local switching.² The Commission found that a rule based on line counts reasonably distinguishes between the mass market for which unbundled switching is required and the medium and large business market which CLECs could serve without unbundled switching.³ However, as pointed out by Allegiance, the record gathered since the *UNE Remand Order* shows that CLECs are able to serve business customers below three lines without access to unbundled local switching.⁴ Cbeyond has also presented information in the record showing that it does not need access to unbundled local switching in order to provide service to business customers that have fewer than three business lines.⁵

¹ Letter from Allegiance Telecom, Inc. to Magalie Roman Salas, January 30, 2001 ("Allegiance Letter").

² *UNE Remand Order*, para. 291.

³ *Id.* para 294.

⁴ See Allegiance letter, n. 3.

⁵ Letter from Cbeyond, CC Docket No. 96-98, December 21, 2000.

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Moreover, there is no basis in the current record for relating three lines to the availability of switching. Instead, once a CLEC has a switch presence in a market, it may be used to provide service to business customers of any number of lines.

In addition, a delineation of the medium and large business market based on line counts is rapidly losing any meaning. As previously noted by Cbeyond in this proceeding, Cbeyond will access its customers through DS1 unbundled local loops and EELs.⁶ Using soft switch technology, DS1 loops and EELs can be configured to provide from anywhere from one to several lines as well as high-speed data connectivity, at a price that allows CLECs a meaningful opportunity to compete. In this environment, there is no meaningful way to identify the medium and large business market based on lines because it is possible to serve them as well as small businesses with the same switching technology with either one or multiple lines all essentially for the same low price. As "next generation" CLECs utilize technologies that provide greater network efficiency, they will have the ability to provide small businesses with more lines for the same price they are currently paying today. The resulting line growth will increase the administrative burden and make it impossible to delineate the small business component of the mass market. Accordingly, there is no basis in the current record for a finding that the current three line test provides an adequate delineation of the mass market or that unbundled switching is necessary to serve customers of three lines or less.

The proposed residential/business split provides a far better delineation of the mass market that CLECs might be impaired in serving without access to unbundled local switching. This approach is more consistent with the Commission's previous attempts to delineate the medium and large business market. To the best of Cbeyond's knowledge, the Commission has never delineated that market based on four or more lines. For example, in *the Access Reform Proceeding*, the FCC determined that multi-line, *i.e.* more than one line, constituted the medium and large business market.⁷ Thus, the proposed residential/business split is closer to the previous Commission determination of the medium and large business market than is the present three line test. Accordingly, the Commission should adopt a business/residential split, rather than a three line test, in order to identify the market for which CLECs may require access to unbundled switching.

The Requirement for EELs Must Be Retained

Cbeyond fully endorses the proposed retention of the availability of the EEL as a condition of the switching carve out. In the *UNE Remand Order*, the Commission concluded that requesting carriers are not impaired in certain circumstances without access to unbundled

⁶ Letter from Cbeyond to Magalie Roman Salas, CC Docket No. 96-98, December 21, 2000.

⁷ *Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd 15982 (1997), *aff'd sub nom. Southwestern Bell Tel Co. v. FCC*, ___ F. 3d ___ (8th Cir., August 19, 1998); Second Order On Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606 (1997)(distinguishing between primary residences and multi-line business customers).

local switching provided that the EEL is available.⁸ The Commission found that the EEL diminishes the cost of collocation because the EEL allows requesting carriers to aggregate loops at fewer collocation locations and to increase their efficiencies by transporting aggregated loops over efficient-high capacity facilities to their central location.⁹ This, in turn, can significantly reduce the costs of deployment in the initial phase of an entry strategy.¹⁰

Cbeyond's business plan verifies the finding of the Commission in *the UNE Remand Order* concerning the need for the availability of the EEL. Cbeyond will access its customers through DS1 unbundled local loops and through EELs aggregate traffic at a single location serving an MSA. Without the EEL, Cbeyond would be impaired in its ability to provide service because it would need numerous additional collocation arrangements which in turn would limit the availability of funds for investment in switches. This is precisely the strategy and circumstance that the Commission contemplated for a new market entrant in the *UNE Remand Order*. Nothing in the record suggests that the Commission should alter its determination concerning the availability of the EEL as a condition of the switching carve out.

Moreover, there is no basis for a finding that this condition could be eliminated because the Commission in the *Supplemental Order*¹¹ has permitted CLECs to convert special access service to the EEL. While the Commission has required ILECs to permit this conversion, the conversion process is not happening with the facility necessary to obviate the need for the independent requirement that ILECs provide new EELs as a condition of the switching carve-out. Before the conversion process can begin, CLECs must order special access which itself is fraught with numerous delays and quality assurance issues. The New York Public Service Commission is examining whether Verizon in that state is adequately providing special access circuits to CLECs.¹² This is representative of special access provisioning problems occurring elsewhere.

Moreover, there are numerous problems associated with the EEL conversion process once special access circuits are obtained. These include ILECs not accepting CLEC self certifications, the number of orders required to obtain a conversion, timeliness of conversions, and restrictions on data circuits for conversion.¹³ The Commission will soon conduct an "EEL Summit" to examine the adequacy of ILEC EEL conversion processes. Cbeyond respectfully suggests that the Commission could not rationally determine that the EEL conversion process is

⁸ *UNE Remand Order*, para. 288.

⁹ *Id.*

¹⁰ *Id.* para. 289.

¹¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-370 (rel. November 24, 1999) ("Supplemental Order"). See also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000).

¹² Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon-New York, Case No. 00-C-205, New York Public Commission (rel. November 24, 2000).

¹³ Letter from ALTS to Magalie Roman Salas, CC Docket No. 96-98, December 22, 2000.

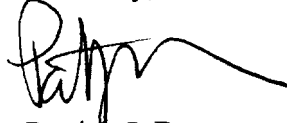
adequate to obviate the need for a requirement for the availability of the EEL as a condition of the switching carve out at the same time that it is examining whether that process is working. On the whole, it is, and will be for the foreseeable future, premature to make any conclusions about the adequacy of the EEL conversion process. The Commission should gain more experience with the conversion process before addressing that issue. Accordingly, the Commission should retain the EEL as a condition of any switching carve-out.

MSAs

Cbeyond also endorses other aspects of the Allegiance proposal including use of any MSA instead of density zone one of the top 50 MSA's to define the availability of unbundled local switching. There never was any substantial basis for use of density zone one given that ILECs use different bases for creating density zones that, moreover, have nothing to do with switching. In addition, MSA's are better related to the availability of switching because CLECs usually offer service throughout an MSA, not just density zone 1. There is also no basis for limiting the switching carve-out to the top 50 MSAs. CLECs are deploying switches outside of the top 50 MSAs and, therefore, are not impaired by the absence of unbundled local switching in any of those markets. Cbeyond also endorses grandfathering of existing density zones 1 to the extent they could not qualify under new standards governing the availability of unbundled local switching.

Accordingly, the Commission should adopt the Allegiance proposal.

Sincerely,



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